



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CHARLES W. PENLAND, SR. and
MARY A. PENLAND
Plaintiffs,

vs.

COUNTY OF SPARTANBURG et al.,
Defendants.

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CIVIL ACTION NO. 6:07-3288-HFF-WMC

ORDER

This case was filed as a real property action. Plaintiffs are proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that (1) the motion to stay be denied without prejudice; (2) the action be dismissed without prejudice and without issuance and service of process; and (3) the dismissal be deemed a strike for purposes of the three strikes rule of 28 U.S.C. § 1915(g). The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 25, 2007, and the Clerk of Court entered the objections on November 7, 2007. The Court has carefully reviewed the objections to the Report,

but finds them to be without merit. To the extent that Plaintiffs have interpreted the Report to suggest that a strike should be issued against Plaintiff Mary Penland, such interpretation of the Report is rejected.

The Court has also considered Plaintiff's assertions that Judge William M. Catoe should recuse himself from consideration of this matter and that the Clerk of Court is biased against Plaintiffs. Plaintiffs, however, have failed to set forth any legal or factual basis such that the Court could make such a determination. Therefore, the Court rejects these contentions.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules the objections, adopts the Report to the extent that it does not contradict this Order, and incorporates it herein. Therefore, it is the judgment of this Court that (1) the motion to stay be **DENIED** without prejudice; (2) the action be **DISMISSED** without prejudice and without issuance and service of process; and (3) the dismissal be deemed a **STRIKE** for purposes of the three strikes rule of 28 U.S.C. § 1915(g) as to Plaintiff Charles Penland only.

IT IS SO ORDERED.

Signed this 15th day of November, 2007, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.